

Statutes
1878

THE
GENERAL STATUTES
OF THE
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY
GEORGE B. YOUNG.

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OF 1878, AND CHAPTER 67 OF THE LAWS OF 1879.

FOURTH EDITION.

WITH SUPPLEMENTS,
CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF
THE LEGISLATIVE SESSION OF 1883.

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1883.

was made, in the same manner, to all intents and purposes, as if the person assaulted had died within the limits of this state. (1875, c. 42, § 1.)

21 M. 369.
 § 24. (SEC. 23.) **Indictment for embezzlement—evidence.** In any prosecution for the offence of embezzling the money, bank-notes, checks, drafts, bills of exchange, or other security for money, of any person, by a clerk, agent or servant of such person, it shall be sufficient to allege generally, in the indictment, an embezzlement of money to a certain amount, without specifying any particulars of such embezzlement, and on the trial evidence may be given of any such embezzlement committed within six months next after the time stated in the indictment; and it shall be sufficient to maintain the charge in the indictment, and shall not be deemed a variance, if it is proved that any money, bank-note, check, draft, bill of exchange, or other security for money, of such person, of whatever amount, was fraudulently embezzled by such clerk, agent or servant, within the said period of six months.

22 M. 76.
 § 25. (SEC. 24.) **Evidence of ownership.** In the prosecution of any offence committed upon, or in relation to, or in any way affecting real estate, or any offence committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it is proved on trial that, at the time when such offence was committed, either the actual or constructive possession, or the general or special property, in the whole or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof. (*As amended 1869, c. 71, § 1.*)

CHAPTER CIX.

ARRAIGNMENT OF DEFENDANT.

SECTION.

1-9. When and where to take place—defendant to be personally present, when—if in custody, to be brought into court, when—bench-warrant to issue, when—form thereof in case of felony—in case of misdemeanor—when offence is bailable—service of bench-warrant.
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SECTION.

14. bench-warrant to issue in such case, when. Defendant to be informed of his right to counsel.
 15-17. Arraignment, how made—defendant to declare his true name—proceedings when he gives other name than that in indictment.
 18-19. Time allowed defendant to plead—motion to set aside indictment, demurrer or plea thereto.

§ 1. **Arraignment.** When the indictment is filed, the defendant shall be arraigned thereon before the court in which it is found, if it is triable therein; or if not, before the court to which it is sent or removed.

§ 2. **When defendant must be present.** If the indictment is for a felony, the defendant shall be personally present; but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

§ 3. **May be brought into court.** When his personal appearance is necessary, if he is in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned.

§ 4. **Bench-warrant may issue, when.** If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or the money deposited, may direct the clerk to issue a bench-warrant for his arrest.

§ 5. **Bench-warrant, how issued.** The clerk, on the application of the county attorney, may accordingly, at any time after the order, whether the court is sitting or not, issue a bench-warrant, into one or more counties.

§ 6. **Form of bench-warrant in felony.** The bench warrant upon the indictment shall, if the offence is a felony, be substantially in the following form:

The district court for the county of _____, and state of Minnesota:
The State of Minnesota to any sheriff, (or other proper officer.)
An indictment having been found on the _____ day of _____, A. D. 18 _____,
in the district court for the county of _____, charging C. D. with the crime
of (designating it generally,) you are therefore commanded forthwith to arrest
the above named C. D., and bring him before this court (or if the venue has
been changed, take him before that court, as the case may be,) to answer the
indictment, or if the court has adjourned for the term, that you deliver him
into the custody of the jailor of the county (or city,) of _____, the
day of _____, A. D.

Witness the Honorable _____

By order of the court. _____

E. F. clerk.

§ 7. **Form of bench warrant in misdemeanors.** If the offence is a misdemeanor, the bench warrant shall be in a similar form, adding to the body thereof a direction to the following effect: "or, if he requires it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment."

§ 8. **Court to fix amount of bail.** If the offence charged is bailable, the court, upon directing the bench warrant to issue, may fix the amount of bail; and in such case an indorsement shall be made upon the bench warrant, and signed by the clerk, to the following effect: "the defendant is to be admitted to bail in the sum of _____ dollars."

§ 9. **Bench warrant, how served.** The bench warrant may be served in any county, in the same manner as a warrant of arrest.

§ 10. **Proceedings before magistrate.** If the defendant is brought before a magistrate of another county, for the purpose of giving bail, the magistrate shall proceed in respect thereto in the same manner as if the defendant had been brought before him on a warrant of arrest.

§ 11. **Proceedings where bail is taken.** On taking bail, the magistrate shall certify that fact on the warrant, and deliver the warrant and recognizance to the officer having charge of the defendant; the officer shall then discharge the defendant from arrest, and without delay deliver the warrant and recognizance to the clerk of the court at which the defendant is required to appear.

§ 12. **Court may order commitment, when.** When the indictment is for felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented or sent, or removed for trial, may order the defendant to be committed to actual custody, unless he give bail in the increased amount to be specified in the order.

§ 13. **Bench warrant may be issued to enforce order.** If the defendant is present when the order is made, he shall be forthwith committed; if he is not present, a bench warrant shall be issued and proceeded upon in the manner provided in this chapter.

§ 14. **Defendant to be informed of his right to counsel.** If the defendant appears for arraignment without counsel, he shall be informed by the court that it is his

right to have counsel before being arraigned, and shall be asked if he desires the aid of counsel.

§ 15. **Arraignment, how made.** The arraignment shall be made by the court, or by the clerk or county attorney under its direction, and consists in reading the indictment to the defendant, and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses indorsed on it or appended thereto, and asking him whether he pleads guilty or not guilty to the indictment.

§ 16. **Defendant to be asked his true name.** When the defendant is arraigned, he shall be informed that if the name by which he is indicted is not his true name, he shall then declare his true name, or be proceeded against by the name in the indictment. If he gives no other name, the court may proceed accordingly.

§ 17. **Proceedings when another name is given.** If he alleges that another name is his true name, the court shall direct an entry thereof in the minutes of the arraignment; and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

§ 18. **Time to plead.** If, on the arraignment, the defendant requires it, he shall be allowed until the next day, or such further time may be allowed him as the court deems reasonable, to answer the indictment.

§ 19. **Demurrer to indictment—plea—motion to set aside.** If the defendant does not require time, as provided in the last section, or if he does, then on the next day, or at such further day as the court may have allowed him, he may, in answer to the arraignment, either move the court to set aside the indictment, or may demur or plead thereto.

CHAPTER CX.

SETTING ASIDE INDICTMENT.

SECTION.

1. Indictment shall be set aside, when.
2. Objections to indictment, waived, when.
3. Motion to set aside indictment heard, when.
4. On denial of motion, defendant shall demur or plead.

SECTION.

5. Proceedings, if motion is granted.
6. Effect of re-submission of case to grand jury.
7. Proceedings, if new indictment is not found.
8. Order setting aside indictment no bar to another prosecution.

§ 1. **Indictment set aside, when.** The indictment shall be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases:

^{23 M. 209.}

First. When it is not found, indorsed and presented, as prescribed in the chapter relating to grand-juries;

Second. When the names of the witnesses examined before the grand-jury are not inserted at the foot of the indictment, or indorsed thereon;

^{10 M. 178 (223).}

Third. When a person is permitted to be present during the session of the grand-jury, while the charge embraced in the indictment was under consideration, except as provided in section thirty-nine of said chapter.

§ 2. **Objections waived, when.** If the motion to set aside the indictment is not made, the defendant is precluded from afterward taking the objections mentioned in the last section.